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No. 89-964

In The

# Supreme Court of the United States

October Term, 1989

RAYMOND J. MOSKAL,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

## BRIEF FOR PETITIONER

DENNIS M. HART
*Counsel for Petitioner*
552 Seventh Street S.E.
Washington, D.C. 20003
(202) 546-7770

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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## QUESTION PRESENTED

Was the opinion of the United States Court of Appeals for the Third Circuit correct when it concluded that the broader concept of criminal liability under 18 U.S.C. 2314 was the "better rule" for judging the type of conduct for which petitioner was found guilty?

## PARTIES INVOLVED

The following individuals appeared as defendants at the District Court and as appellants in the Court of Appeals: Raymond J. Moskal, Alvin C. Davis and Dennis H. Smith.



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RAYMOND J. MOSKAL,

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v.

UNITED STATES OF AMERICA,

*Respondent.*

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

## BRIEF FOR PETITIONER

Petitioner Raymond J. Moskal respectfully requests this Court to review the judgment of the United States Court of Appeals for the Third Circuit entered on October 18, 1989, affirming his convictions for, *inter alia*, securities fraud in violation of 18 U.S.C. 2314.

## OPINION BELOW

The United States Court of Appeals for the Third Circuit[1] issued an opinion on October 18, 1989, which

[1] The decision was rendered by a panel of judges assigned from the Second Circuit sitting by designation pursuant to 28 U.S.C. 291.

affirmed the petitioner's convictions in all respects. The opinion is reported at 888 F.2d 283. The opinion and judgment are reproduced in the initial petition for certiorari as Appendix A.

## JURISDICTION

The opinion of the United States Court of Appeals for the Third Circuit was issued on October 18, 1989. A Petition for Writ of Certiorari was filed on December 17, 1989, and was granted on March 19, 1990. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

## STATUTES INVOLVED

Petitioner was convicted of violation of 18 U.S.C. 371, 18 U.S.C. 513, and 18 U.S.C. 2314. Jurisdiction for review by the Court of Appeals for the Third Circuit is 28 U.S.C. 1291. The substantive criminal statute for purposes of this appeal is as follows:

**Sec. 2314. Transportation of stolen goods, securities, money, fraudulent State tax stamps, or articles used in counterfeiting**

> Whoever transports in interstate or foreign commerce any goods, wares, merchandise, securities or money, of the value of $5,000 or more, knowing the same to have been stolen, converted or taken by fraud; or
>
> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transports or causes to be transported, or induces any person to travel in, or to be transported in interstate commerce in the execution or concealment of a scheme or artifice to defraud that person of money or property having a value of $5,000 or more; or
>
> Whoever with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered or counterfeited; or
>
> Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any traveler's check bearing a forged countersignature; or
>
> Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce, any tool, implement, or thing used or fitted to be used in falsely making, forging, altering, or counterfeiting any security or tax stamps, or any part thereof –
>
> Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.



## STATEMENT OF THE CASE

### A. Procedural History

On September 13, 1988, a five-count indictment was filed in the United States District Court for the Middle District of Pennsylvania which alleged that the petitioner and two others, Alvin C. Davis and Dennis H. Smith, conspired between themselves and others to violate 18 U.S.C. 513 (Counterfeit Securities) and 18 U.S.C. 2314

(Transportation of Fraudulent Securities) in the context of a wholesale used car dealership located in Manheim, Pennsylvania. The indictment alleged that the conspiracy took place between December 1984 and July 1985 and involved the rollback of used car odometers and the subsequent "washing" of titles through the use of title transfers in the Commonwealth of Virginia and the State of Pennsylvania. (J.A. 5-14)

On January 9, 1989, petitioner and co-defendants Smith and Davis began a four-day jury trial before the Honorable William Caldwell sitting at Harrisburg, Pennsylvania. On January 12, 1989 , the jury returned a verdict of guilty against petitioner and the co-defendants on all counts. On March 20, 1989, petitioner was sentenced to a term of six months incarceration and three years probation. (J.A. 20-24)[2]

On October 18, 1989, a panel of judges sitting by designation for the Third Circuit Court of Appeals, affirmed petitioner's convictions in all respects. A Petition for Writ of Certiorari was filed on December 17, 1989, which sought review of the question of whether the government's theory of liability under 18 U.S.C. 2314 was correct as affirmed by the Third Circuit. The Writ of Certiorari was granted on March 19, 1990.

### B. Facts

The conspiracy count (Count 1) alleged that high mileage used cars were bought by the defendants and

[2] Co-defendant Smith was sentenced to a term of 2 years incarceration and a $2,500 fine. Mr. Davis was sentenced to 3 years and a $5,000 fine.



other wholesale dealers for the purposes of turning back the odometers and obtaining new titles that reflected the lower mileage. The cars were then sold to retail used cars dealers and eventually to unknowing customers at a higher price than ordinarily could be obtained for vehicles of such higher mileage.

The government alleged that the low-mileage titles were obtained by a title "washing" scheme which relied upon original titles altered in Pennsylvania by co-conspirators and sent to additional co-conspirators in Virginia. Once in Virginia, these individuals (who were not then on trial) would apply for new Virginia titles which, when issued, reflected the lower mileage of the original altered documents.[3] The new Virginia titles were then returned to the wholesale used car dealership at which the petitioner was employed in Manheim, Pennsylvania, where the cars were then sold to a retail Pennsylvania used car dealer and a Pennsylvania automobile title subsequently obtained.

For trial purposes, the government selected two specific automobiles to demonstrate the operation. The transfer of the titles for these two cars constituted counts two through five of the indictment. Count 2 alleged the interstate transportation from Virginia to Pennsylvania of a Virginia DMV title for a 1984 Ford in violation of 18 U.S.C. 2314. Count 3 alleged the possession and uttering of that same title in violation of 18 U.S.C. 513 when it was presented at the Pennsylvania DMV to obtain a title for

[3] Unlike many other states, Virginia did not verify the mileage reflected on the out-of-state title.

the same 1984 Ford. Count 4 alleged a violation of 18 U.S.C. 2314 when the defendants received at the Pennsylvania dealership a Virginia title for a 1982 Mazda which had a lowered odometer reading. Count 5 alleged another violation of 18 U.S.C. 513 when that same Mazda title was presented to the Pennsylvania DMV to obtain a title so that the car could be sold in that state.

While defendants challenged the extent of their knowledge of the conspiracy, there was no serious dispute as to the factual allegations of the operation. The government presented testimony from various members of the organization in Pennsylvania who physically altered the original titles. There was no allegation that petitioner altered these titles. Rather, the government showed that petitioner, who was a title clerk for a Pennsylvania used car dealer, sent these altered titles (usually via Federal Express) to a used car dealer in Virginia and later would receive the new Virginia titles when they were returned by the Virginia dealer.

The government also presented testimony from the Virginia dealer who received the altered titles, obtained new Virginia titles that reflected the lower mileage, and then sent the Virginia titles to wholesale used car dealers in Pennsylvania. The cars with new Virginia titles were then sold to retail automobile dealers who would obtain local titles when the vehicles were sold to individual customers.

## SUMMARY OF ARGUMENT

While the automobile titles issued in Virginia did contain false mileage figures, the interstate transportation



of those facially valid titles was not a violation of 18 U.S.C. 2314. The inability to conclude that the Virginia titles were falsely made, forged, altered or counterfeited in any way forecloses the receipt of such titles as a basis for criminal liability under 18 U.S.C. 2314.

To criminalize this particular conduct, some lower courts have "broadened" Section 2314 to include the transportation of valid titles with incorrect information. This broadened scope is without statutory or legislative basis and presents the possibility of far reaching criminal and civil repercussions if accepted.

## ARGUMENT

### THE CONDUCT OF THE PETITIONER IN RECEIVING THE VIRGINIA TITLES WAS NOT A VIOLATION OF 18 U.S.C. 2314

It is undisputed that the government's proof at trial demonstrated that the automobile titles were altered in Pennsylvania by someone other than the petitioner. It was also undisputed that the Virginia titles obtained by the used car dealer in Virginia and sent to the petitioner were not themselves altered in any way. There was no dispute that the Virginia titles were validly issued, albeit with an incorrect mileage figure. Nonetheless, the government elected to indict the petitioner under 18 U.S.C. 2314 for the transportation in interstate commerce of the Virginia titles only. Petitioner was *not* charged with sending the original altered titles to Virginia.

At the close of the evidence, the petitioner objected to the District Court on the grounds that the Virginia titles were not forged, altered, counterfeited or falsely made and thus not within the prohibition of Sec. 2314. The

District Court concluded otherwise and let the case proceed to the jury. (J.A. 1819) Despite the affirmance of this decision by the Third Circuit Court of Appeals, petitioner continues to insist that the government has advanced an incorrect theory of criminal liability and that counts 2 and 4 should not have been submitted to the jury.

Petitioner suggests that the government's theory of liability is incorrect for three reasons – any one of which should have resulted in dismissal of the Section 2314 counts.

**A. Case Law Development of Section 2314 Suggests that the Conduct of the Petitioner Is Not Prohibited by the Statute.**

The petitioner challenged the decision of the District Court as contrary to the holdings of several courts which considered the very same question, including *United States v. Sparrow*, 635 F.2d 794 (10th Cir. 1980), *cert. denied*, 450 U.S. 1004 (1981) The decision of the Third Circuit acknowledges the holding of *Sparrow*, but concluded that the "better rule" is represented by *United States v. Cotoia*, 785 F.2d 497 (4th Cir. 1986) and *United States v. Daly*, 716 F.2d 1499 (9th Cir. 1983), *cert. dismissed*, 465 U.S. 1075 (1984).[4] Petitioner must disagree.

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[4] This apparently is the first opportunity for this Court to squarely consider this question. Mr. Sparrow sought review by this Court on other grounds. Mr. Cotoia did not seek review of the Fourth Circuit's decision and Mr. Daly's petition for *certiorari*, which was initially unopposed by the government, was dismissed at the suggestion of the government pursuant to *Molinaro v. New Jersey*, 396 U.S. 365 (1970), when Mr. Daly became a fugitive.



Section 2314 of Title 18 of the United States Code provides in pertinent part that:

> Whoever with unlawful or fraudulent intent transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered or counterfeited . . .
>
> Shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

The Virginia titles for which the petitioner was convicted of illegally transporting do not qualify as a "falsely made, forged, altered or counterfeited" documents within the meaning of Section 2314. While these titles may have contained incorrect mileage figures and while the presence of such a figure may be violative of various state or federal statutes (none of which petitioner was charged with),[5] the interstate transportation of such titles does not violate Section 2314.

The Virginia titles themselves were never physically altered. Rather, they were issued by proper state officials based on titles sent from Pennsylvania that had been altered. Petitioner was never charged with the Pennsylvania-to-Virginia transfer but only with the transport of the unaltered Virginia titles back to Pennsylvania. Thus, the question that must be answered by this Court is whether the unaltered Virginia titles were "falsely made, forged,

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[5] *See, e.g. Schmuck v. United States*, ___ U.S. ___, 109 S.Ct. 1443, 103 L.Ed2d 734 (1989).

altered, or counterfeited." Petitioner believes that the answer must be in the negative.

The Third Circuit appears to have adopted the rationale that an item is fraudulent under Section 2314 if it contains a single error that is present for whatever reason and regardless of the authenticity of the actual document. Petitioner suggests that such a brush is far too broad – particularly for a criminal statute.

The first court to petitioner's knowledge to consider this question under nearly identical circumstances agreed that the interstate transportation of valid automobile titles with incorrect mileage statements was not, in itself, a violation of Section 2314. *United States v. Rudge*, 474 F.Supp. 360 (S.D.Iowa 1979). Significantly, the government never elected to appeal that decision.

Several years after *Rudge*, the Tenth Circuit considered the same question in *United States v. Sparrow*, 614 F.2d 229 (10th Cir. 1980). In the initial panel decision, the court concluded that an automobile title that contained false information as to ownership is a forged or falsely made security. Upon consideration by the full court however, the Section 2314 convictions of Mr. Sparrow were vacated because "the certificate of title was duly executed by Oregon officials. The certificate of title itself was precisely what it purported to be. Only the facts underlying the document were false." *United States v. Sparrow*, 635 F.2d 794, 796 (10th Cir.) (*en banc*), *cert. denied*, 450 U.S. 1004 (1981).

In *Sparrow*, the Tenth Circuit mentioned several prior cases and contrasted their support for the proposition that a document is not covered within the purview of



Section 2314 if, although containing false information, is neither forged nor altered. *Marteney v. United States*, 216 F.2d 760 (10th Cir. 1954) [no violation of Section 2314 although false information on the document]; *United States v. Crim*, 527 F.2d 289 (10th Cir. 1975), *cert. denied*, 425 U.S. 905 (1976) [a false signature rendered the execution of documents false]. *Sparrow* remains today the rule within the Tenth Circuit.

In considering Section 2314 in the context of other securities, courts have concluded that the addition of false information to otherwise valid documents does not make the documents "falsely made" and have reversed Section 2314 convictions. *United States v. Massa*, 740 F.2d 629, 646 (8th Cir. 1984), *cert. denied*, 471 U.S. 1115 (1985); *United States v. Tyson*, 690 F.2d 9 (1st Cir. 1982). Reversal was required because the words "falsely made" relate to "genuineness of execution and not falsity of content." *Marteney*, 216 F.2d at 763.

Subsequent to *Sparrow*, the Ninth Circuit considered the application of Section 2314 to automobile titles in which the *identity* and *ownership* information had been altered. In *United States v. Daly*, 716 F.2d 1499 (9th Cir. 1983), *cert. denied*, 465 U.S. 1075 (1984), a panel of the Ninth Circuit considered the case of Nebraska titles issued on the basis of *counterfeit* California and Nevada titles which contained false owner names and the VIN information of *stolen* vehicles. *Id.* at 1503. In concluding that the new Nebraska titles were covered by Section 2314, the court reasoned that official state participation in issuing the new titles did not change the false nature of the ownership, which is, of course, the principal purpose

of a vehicle title. *Id.* at 1509. Unlike the situation in *Daly*, here the ownership information was *never* altered.

The decision in *Daly* was subsequently examined by the Fourth Circuit in *United States v. Cotoia*, 785 F.2d 497 (4th Cir. 1986), in which the indictment charged both the transport of the altered titles to North Carolina and the return of the new titles to Rhode Island. The Fourth Circuit declined to follow the reasoning of the District Court in *Rudge* because the government in *Rudge* alleged a Section 2314 violation only as to the "new" titles (as the government did here) and not the interstate transport of the admittedly altered "old" titles. The government in *Cotoia* had not so limited its allegation and the Fourth Circuit concluded that the entire scheme of altered "old" titles transported interstate to produce facially valid "new" titles was a criminal endeavor that Section 2314 should cover. *Id.* at 501.[6] Thus, it is significant that what the government formulated as its theory of liability in *Cotoia* to justify Section 2314 liability was missing in the present case.

Prior to the Court of Appeals decision in this case, the only other direct guidance to the question on the Third Circuit was provided by the instant District Court

[6] The only support offered by the *Cotoia* court regarding the materiality and importance of a false odometer reading was a Sixth Circuit *per curiam* opinion that dealt with the sale of horses. *United States v. Bowers*, 739 F.2d 1050 (6th Cir.), *cert. denied, sub nom., Oakes v. United States*, 469 U.S. 861 (1984). Unlike the petitioner's case, it was the identity and ownership of the horses that had been altered in the *Bowers* scheme and which served as the basis for the court's holding of inclusion under Section 2314.



which rejected *Sparrow* and *Rudge* and concluded in a 1985 case that the "broader concept" of *Daly* should apply to any scheme in which the person securing the title included false information. *United States v. Kaufman*, 670 F.Supp. 134, 136 (M.D.Pa. 1985).[7] That decision was affirmed by a panel of the Third Circuit in an unpublished order. *United States v. Kaufman*, 782 F.2d 1032 (3rd Cir. 1985).

Other than a reference to the above mentioned cases, the Court of Appeals decision below concluded only that the "better rule" was for the broader approach of inclusion. 888 F.2d at 285.

Neither the government at trial nor the court below has ever suggested that the altered mileage figures on Virginia titles had any effect on their validity. In fact, the Court of Appeals acknowledged, as it must, that valid legal title to a vehicle is transferred even where the title document reflects false mileage figures. While the Court of Appeals suggested (without any statutory support) that mileage is a material part of a title certificate, even

[7] The *Kaufman* decision cites as its only other authority a Fifth Circuit decision, *United States v. Mitchell*, 588 F.2d 481 (5th Cir. 1979). Although *Mitchell* dealt with backdated certificates of deposit and not automobile titles, it did lend support to the "broader" scope rationale of Section 2314 interpretation. While it could be argued that the CDs in *Mitchell* were fraudulent on their face because of the backdating, the more significant argument is that the Fifth Circuit concluded that the CDs were falsely made because the maker knew at the time of their issuance that there were insufficient funds to cover the securities. *Id.* at 484. In any case, *Mitchell's* application to facially valid automobile titles is tenuous at best.

accepting this proposition for purposes of argument, inclusion of false mileage figures does not result in the same effects (stolen vehicles, fictitious owners and altered VIN information) that were present and which justified the convictions in the cases relied upon by the Third Circuit to support the "better rule" conclusion. Petitioner suggests that the better rule must be that of *Sparrow* and that the present attempt to introduce a new and broader interpretation of Section 2314 should be rejected by this Court.

### B. Principles of Statutory Construction Suggest that the Conduct of the Petitioner its Not Prohibited by Section 2314.

The principle of strict construction of criminal statutes demands that the language of a criminal statute must be strictly construed and limited to its terms and that any ambiguity must be resolved in favor of lenity. *United States v. Enmons*, 410 U.S. 396, 411 (1973). This is a principle of long standing application in this Court. *United States v. Wiltberger*, 18 U.S. 76 (1820).

The principle of strict construction of criminal statutes also demands that "some determinate limits be established based upon the actual words of the statute." *United States v. Campos-Serrano*, 404 U.S. 293, 299 (1971).

The District Court was simply incorrect in its *Kaufman* opinion when it concluded that the inclusion of the transportation of valid titles with false mileage should be prohibited under Section 2314 as a "broader concept." 670 F.Supp. at 136. The legal support to justify the "broadening" of the statute is nonexistent and flies in the face of



the foregoing rule of strict construction of a criminal statute. This Court has previously overruled attempts by lower courts to expand Section 2314 for conduct not specifically covered by the words of the statute. *Dowling v. United States*, 473 U.S. 207 (1985)

What is clear is that Section 2314 requires the transported securities be one of four listed categories in order for their transportation to be illegal. There has been no dispute at any level of this proceeding that the Virginia titles in question were not counterfeited. Nor were they altered or forged. As the court below correctly recognized, the Virginia titles were valid automobile titles that were capable of passing legal title from one person to another. Thus, the only remaining category is that of "falsely made." Section 2314 itself does not define this term, nor is the term defined in other sections of the criminal code in which it is employed.[8]

Although Section 2314 does not define the term, "falsely made," petitioner notes that the term "forged" was usually defined at common law as a "false making" or alteration of a written instrument with intent to defraud. *See, Gilbert v. United States*, 370 U.S. 650, 656-657, n. 8-10 (1962). Indeed, several courts have concluded that forgery and "false making" are essentially synonymous. *Sparrow*, 635 F.2d at 796; *United States v. Jones*, 553 F.2d 352, 354 (4th Cir.), *cert. denied*, 431 U.S. 568 (1977); *United*

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[8] *See, e.g.* 18 U.S.C. 478 (foreign obligations); 18 U.S.C. 495 (contracts, deeds or powers of attorneys); 18 U.S.C. 507 (ship's papers); 18 U.S.C. 1426 (naturalization papers); 18 U.S.C. 1543 (passports).

*States v. Johnson*, 504 F.2d 622, 625 (7th Cir. 1974); *Marteney*, 216 F.2d at 763; *Greathouse v. United States*, 170 F.2d 512, 514 (4th Cir. 1948).[9]

This Court in *Gilbert* concluded that where the falsity lies in the representation of underlying facts described in a document, but not in the genuineness of its execution, forgery is generally found not to exist. Under the view of synonymous conduct or equivalency, a security in the form of a motor vehicle certificate of title is not falsely made if it is issued as a genuine certificate by the appropriate state authorities and the presence of fictitious information that does not affect ownership, cannot result in a charge of false making.

**C. The Legislative History of Section 2314 Does Not Suggest the Inclusion of Petitioner's Conduct as Illegal Action.**

Petitioner believes that no support for the Third Circuit's "broader" rule can be found in the legislative history of the statute in question.

As this Court observed in *Dowling*: "criminal statutes [do not] take on straitjackets upon enactment." 473 U.S. at 228. Thus, the canon of strict construction of criminal statutes "does not mean that every criminal statute must be given the narrowest possible meaning in complete

[9] Other courts have opined that statutory language which includes the phrase "false making" is a legislative attempt to broaden a statute beyond the traditional concepts of forgery. *See, United States v. Huntley*, 535 F.2d 1400, 1402 (5th Cir. 1976), *cert. denied*, 430 U.S. 929 (1977).



disregard of the purpose of the legislation." *United States v. Bramblett*, 348 U.S. 503, 510 (1955). Mindful of these guidelines to statutory interpretation however, the attempt to discover any Congressional intent to prohibit the type of conduct for which the petitioner was convicted must ultimately fail.

Congress enacted the progenitor to the current Section 2314 as an extension of the National Motor Vehicle Theft Act in 1919. (41 Stat. 324). In 1934, Congress extended the provisions of the Act to other stolen property when it created the National Stolen Property Act. (48 Stat. 794) The predecessor paragraph to the provision at issue in this case was enacted in 1939 as an amendment to the National Stolen Property Act. (53 Stat. 1178) This was the first appearance of the "falsely made" language in the statute. However, the legislative history to the amendment provides no assistance in defining the term "falsely made." The committee reports do not discuss the intended meaning of the term. See, S.Rep. No. 674, 76th Cong. 1st Sess (1939); H.R.Rep. No. 422, 76th Cong, 1st Sess.[10] Subsequent amendments and additions have not filled the void of the silence concerning what Congress meant by "falsely made."

Petitioner notes that Congress has not hesitated to amend Section 2314 in response to judicial determinations that the language of the statute does not cover

[10] While admittedly not conclusive in nature, the legislative reports on the 1939 amendment do include correspondence from the Attorney General, dated December 29, 1938, which recommended the proposed amendment in order to expand the statute to include the crime of embezzlement.

specific conduct (amended to expressly include traveler's checks). *See, Street v. United States*, 331 F.2d 151 (8th Cir. 1964); H.R.Rep. No. 1728, 90th Cong., 2d Sess, 1968 U.S.Code Cong. & Ad. News, 3654. No such attempt at amendment or explanation has been made by Congress subsequent to the initial determinations by the courts in *Sparrow* and *Rudge* that the conduct at issue here is not prohibited by Section 2314.

In the complete absence of any Congressional explanation of what is meant by the term "falsely made," the plain meaning of the statute must prevail over any attempt to broaden its coverage for conduct which was not even contemplated at the time of the statute's passage.

### D. There Are Sound Policy Reasons for Rejecting the "Broader Concept" Approach of the Third Circuit.

This Court recognized in *Dowling* that the application of the government's theory of broadened liability of Section 2314 would result in serious and undesirable consequences ... ch an expansive view were to be approved. Petitioner suggests that the same is true of the government's approach here.

In 1985 (the year of the violations alleged in the present indictment) there were 171,654,000 vehicle registrations in the United States.[11] In that same year, over 7,608,308 used cars were reported sold by United States franchised dealers alone.[12] Thus, the implication of the

[11] U.S. Department of Commerce, 1989 Statistical Abstract of the United States, p. 595.

[12] Ward's Automotive Yearbook (1988), p. 160.



government's theory of liability imposes a considerable impact upon everyday commerce. As the facts at the trial below demonstrated, a typical used car title passes between many parties (from the new car trade-in dealer to the auction house to the wholesale dealer to the used car dealer to the ultimate consumer) within a short period of time. If the government's theory is to be upheld and the conclusion reached that any title derived from the original altered title is somehow "illegal," the repercussions will be staggering – literally millions of heretofore legitimate automobile transactions will be open to dispute.

As shown by the evidence at the trial below, a co-conspirator in this case testified that he and his wife alone were involved in six to ten thousand title washes within a period of only a few years. The evidence showed that he was only one of many who engaged in title "washing." Thus, to invalidate all of these automobile titles because they contain an incorrect mileage figure may well result in havoc in the stream of automobile commerce. This was recognized by the lower courts in both *Sparrow* and *Rudge*.

In addition, approval of the government's theory of liability in this case means that criminal liability will be extended to the makers of documents containing false, but not necessarily materially false, information who would not otherwise be held criminally liable under Section 2314. As demonstrated above, prior to this case, forgery would not be appropriate for the conduct charged here. By expanding "false making" to include the instant conduct, the Court would open a liability umbrella over Section 2314 that was neither intended by the Congress nor justified by common sense.

## CONCLUSION

Wherefore, for the foregoing reasons, petitioner respectfully submits that the opinion of the Third Circuit Court of Appeals be reversed.

Respectfully submitted,

DENNIS M. HART
*Counsel for Petitioner*
552 Seventh Street S.E.
Washington, D.C. 20003
(202) 546-7770